IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No. 215 of 2001

Judgement reserved on: 17.12.2007

Date of decision: 18.12.2007.

State of H.P **…….Appellant**

Vs.

Jaiya & Ors. **…. Respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant : **Mr. M.S. Chandel, Advocate General with Mr. M.L. Chauhan, Addl. Advocate General.**

For the Respondents : **Mr. D.N. Ronta, Advocate.**

Kuldip Singh, Judge.

The State is in appeal against the award dated 29.4.2000 passed by learned Addl. District Judge, Shimla in L.Ref. No.14-S/4 of 1989, awarding Rs.3,45,800/-along with other statutory payments, interest for acquiring land measuring 32 biswas of the respondents.

2. The facts in brief are that State for acquiring the land of the respondents, comprised in khasra No.407/1, measuring 0-16 Biswas, khasra No.268/1, measuring 0-5 Biswas and khasra No. 265/1 measuring 0-11 Biswas, total 1 Bigha 12 Biswas (32 Biswas) situated in Chak Kaljar, Tehsil Theog, District Shimla, for public

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

purpose of construction of Matiana-Mahori Road in Tehsil Theog issued notification under Section 4 of the Land Acquisition Act, 1894 (for short 'Act') which was published in Gazette on 3.8.1985. The Land Acquisition Collector (for short 'Collector') made the award on 19.1.1988 and awarded compensation as per the classification of the land. The owners were not satisfied with the award of the Collector, therefore, they filed reference petition under Section 18 of the Act. The respondents claimed market value of the acquired land as per rates prevailing in adjacent Kalinda Chak. In the reference petition following issues were framed:-

1) Whether the petitioners are entitled to enhancement of compensation as claimed in the petition?...OPP

2) Whether the petitioners are entitled to interest as claimed?....OPP

3) Relief.

3. The learned Addl. District Judge decided the reference petition vide award dated 27.9.1991 which was assailed by way of appeal in this Court. On 31.5.1999, a Division Bench of this Court allowed the appeal and remitted the case to the Reference Court with a direction to give opportunity to the parties to adduce evidence afresh, consider the same in the light of the law laid down by the apex Court and then decide the compensation accordingly. The learned Addl. District Judge after remand, decided the reference vide award dated 29.4.2000 and assessed the market value of the

acquired land at Rs.3,45,800/-, the learned Addl. District Judge has also awarded other statutory amounts, interest as per impugned award, hence this appeal.

4. I have heard Mr. M.S. Chandel, learned Advocate General for the State and Mr. D.N. Ronta, learned counsel for the respondents. It has been submitted on behalf of the State that learned Addl. District Judge has awarded compensation to the respondents on the higher side. The market value has been assessed on wrong basis. The material on record has been misinterpreted. The respondents are not entitled to enhancement of compensation over and above what has been awarded by the Collector. The learned counsel for the respondents has supported the impugned award and has submitted that in RFA No.19 of 2002 decided on 23.7.2007, a learned Single Judge of this Court has assessed the market value at the rate of Rs.2,16,000/- per bigha for Bakhal Doem land. The land involved in RFA No.19 of 2002 was also acquired for construction of Matiana Mahori road vide notification dated 3.8.1985 issued under Section 4 of the Act as in the present case.

5. The respondent No.1 has appeared as PW-7 and has stated that on acquired land he used to grow cabbage and pea crops. He has stated that income from the acquired land used to be from Rs.70,000/- to Rs.80,000/- per annum per bigha. PW-3 Hem Chand, PW-4 Keshwa Nand and PW-5 Baghat Ram have also stated regarding per bigha yield of cabbage and pea crops in the area.

PW-5 Baghat Ram has stated that no good quality land was sold in Kaljar Chak for the last 30/35 years. PW-6 Gurdas Ram has stated that he has purchased one biswa land in Kaljar Chak from Nekha for Rs.9,500/- vide sale deed Ex.PW-6/A. The market value of land in that area was from Rs.18,000/- to Rs.30,000/- per biswa but he has purchased one biswa land for Rs.9,500/- because of his good relation with Nekha. PW-2 Joginder Singh Patwari has proved the five years average sale price of land in village Kalinda , a copy Ex.PB. He has also placed on record the five years average sale price of land in Chak Kaljar, a copy Ex.PC. In cross-examination he has stated that he does not have requisite record to show the qualitative difference between the land of two Chaks. RW-2 Laxmi Singh Patwari has placed on record yearly average market price Ex.RA of land in village Kaljar prepared by him. No sale deeds were produced by appellant for assessing the market value of the acquired land.

6. The learned Addl. District Judge has noticed that sale deed Ex.PW-6/A is of one biswa land only and is a solitary sale instance and therefore, he declined to assess the market value of the acquired land on the basis of sale deed Ex.PW-6/A. The learned Addl. District Judge has relied ***State of Haryana vs. Gurcharan Singh and another AIR 1996 Supreme Court 106*** for assessing the market value of the acquired land on the basis of annual yield. The learned Addl. District Judge has assessed the yield of acquired land at Rs.18,000/- per annum per bigha and after applying multiplier of 12 has determined the market value of the acquired land

at Rs.2,16,000/- per bigha or Rs.10,800/- per biswa. The acquired land is 1-12 bighas i.e. 32 biswas , therefore, learned Addl. District Judge has assessed the market value of the acquired land at Rs.10,800 x 32 = Rs. 3,45,800/- .

7. The learned counsel for the respondents has submitted that in RFA No.19 of 2002 decided on 23.7.2007 the land was also acquired vide notification dated 3.8.1985 issued under Section 4 of the Act for the same road as in the present case. This fact has not been denied on behalf of the State. The learned Single Judge in RFA No.19 of 2002 has approved the assessment made by learned Addl. District Judge at Rs.2,16,000/- per bigha. Therefore, the present case is covered by the judgment dated 23.7.2007 passed in RFA No.19 of 2002 wherein market value of the land has been approved at Rs.2,16,000/- per bigha or Rs.10,800/- per biswa. The State has failed to point out any illegality in the impugned award. The other statutory payments and interest have also been rightly awarded by learned Addl. District Judge in the impugned award.

8. No other point was urged.

9. The result of the above discussion, appeal fails and is accordingly dismissed.

(Kuldip Singh)
Judge

December 18, 2007
(sks)